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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/040,105	10/19/2001	David Laverne Sprinkle	DEE6270P0010US	8827

7590 11/21/2003
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EXAMINER

TO, TOAN C

ART UNIT PAPER NUMBER

3616

DATE MAILED: 11/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 10/040,105	Applicant(s) SPRINKLE ET AL.
Examiner Toan C To	Art Unit 3616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 20 August 2003.
- 2a) This action is FINAL.
- 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-14 is/are pending in the application.
4a) Of the above claim(s) 2,3,6,8 and 14 is/are withdrawn from consideration.
- 5) Claim(s) 7 and 9-11 is/are allowed.
- 6) Claim(s) 1,5 and 12 is/are rejected.
- 7) Claim(s) 4 and 13 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____ .
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
- 4) Interview Summary (PTO-413) Paper No(s). _____ .
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other:

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Species II (represented by figure 11), claims 1, 4-7, and 9-13 in Paper No. 8 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 2-3, 8, and 14 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 8.
3. Claim 6 is withdrawn from further consideration by the examiner as being drawn to a non-elected species. In this case, "activator comprises a speed selector and a separate direction selector" as recited in claim 6 is drawn to a non-elected species III.

Information Disclosure Statement

4. The information disclosure statement filed on February 15, 2002 fails to comply with 37 CFR 1.98(a)(1), which requires a list of all patents, publications, or other information submitted for consideration by the Office. It has been placed in the application file, but the information referred to therein has not been considered.

Drawings

5. The drawings are objected to because figure 15 is not of sufficient quality to facilitate understanding of the invention. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Objections

6. Claim 12 is objected to because of the following informalities:

Claim 12 recites the limitation "the speed" in line 1. There is insufficient antecedent basis for this limitation in the claim. Appropriate correction is required.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitation "said system" in line 8 renders the claim indefinite, since it is not known whether "said system" is referred to "a creep speed control system" or "vehicle control system".

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner (U.S. 4,869,337) in view of Bates (U.S. 5,681,242).

Wagner discloses a utility vehicle control system for a utility vehicle having a forward facing driving position and a rearward-facing seat (50).

Wagner does not directly disclose a utility vehicle control system comprising: a speed controllable transmission operable to output power to drive a wheel; a creep speed control actuator located adjacent to the rearward facing seat; a creep speed control system operatively connected to the actuator and to the transmission, the system converting movement of the speed control actuator to speed change of the transmission.

Bates teaches the invention in which a utility vehicle control system comprising: a speed controllable transmission (38) operable to output power to drive a wheel; a creep speed control actuator (40); a creep speed control (20) system operatively connected to the actuator (40) and to the transmission (38), the system converting movement of the speed control actuator (40) to speed change of the transmission (38) in order to provide comfort and safety for the operator upon operation of the vehicle.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the utility vehicle of Wagner by replacing his control system by a control system as taught by Bates in order to provide comfort and safety for the operator upon operation of the vehicle.

11. Claim 1 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner (U.S. 4,869,337) in view of Duthie et al (U.S. 5,056,615).

Wagner discloses a utility vehicle control system for a utility vehicle having a forward facing driving position and a rearward-facing seat (50).

Wagner does not directly disclose a utility vehicle control system comprising: a speed controllable transmission operable to output power to drive a wheel; a creep speed control actuator located adjacent to the rearward facing seat; a creep speed control system operatively connected to the actuator and to the transmission, the system converting movement of the speed control actuator to speed change of the transmission.

Duthie et al teaches the invention in which a utility vehicle control system comprising: a speed controllable transmission (column 1, line 23) operable to output power to drive a wheel; a creep speed control actuator (12); a creep speed control (50) system operatively connected to the actuator (12) and to the transmission, the system converting movement of the speed control actuator (12) to speed change of the transmission in order to provide comfort and safety for the operator upon operation of the vehicle; wherein the actuator (12) is located to be hand activated by an operator.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the utility vehicle of Wagner by replacing his control system by a control system as taught by Duthie et al in order to provide comfort and safety for the operator upon operation of the vehicle.

12. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner (U.S. 4,869,337) in view of Duthie et al (U.S. 5,056,615).

Wagner discloses a method of controlling a speed of a vehicle from a rear implement facing seat (50).

Wagner does not directly disclose the method for controlling speed comprising the steps of: moving a creep speed actuator to output a signal proportional to speed demand; sending the output signal to a transmission of the vehicle to control speed of the transmission.

Duthie et al teaches the invention in which the method for controlling speed comprising the steps of: moving a creep speed actuator (12) to output a signal proportional to speed demand; sending the output signal to a transmission (see column 1, line 23) of the vehicle to control speed of the transmission in order to provide comfort and safety for the operator upon operation of the vehicle.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the utility vehicle of Wagener by replacing his control system by a control system as taught by Duthie et al in order to provide comfort and safety for the operator upon operation of the vehicle.

Allowable Subject Matter

13. Claim 4 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

14. Claim 7, 9-11, allowed.

15. Claim 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Toan To whose telephone number is (703) 306-5951. The examiner can normally be reached on Monday-Friday from 8:00 AM to 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson, can be reached on (703) 308-2089. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-2571. Any inquiry of a general nature or relating to the status of this application or this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-1113.

To, T

November 11, 2003